

AMENDED IN ASSEMBLY APRIL 28, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1015**

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**Introduced by Assembly Member Torlakson**  
**(Coauthor: Assembly Member V. Manuel Perez)**  
**(Coauthor: Senator Padilla)**

February 27, 2009

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An act to add Section 381c to the Penal Code, relating to nitrous oxide.

LEGISLATIVE COUNSEL'S DIGEST

AB 1015, as amended, Torlakson. Nitrous oxide: prohibit sale to minors.

Existing law makes it a misdemeanor for any person to possess nitrous oxide or any substance containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or to knowingly and with the intent to do so be under the influence of nitrous oxide or any material containing nitrous oxide.

This bill would provide, in addition, that it is a misdemeanor, punishable as specified, to sell or give away a device, *canister, tank, or receptacle exclusively* containing nitrous oxide, *or exclusively containing a chemical compound mixed with nitrous oxide*, to a person under 18 years of age, as specified. The bill would ~~require every retailer selling devices exclusively containing nitrous oxide to require specified purchasers to exhibit proper proof of age, as specified. A retailer convicted 2 or more times of any of the bill's provisions would be~~

subject to a suspension of its business license, as specified *also make it a misdemeanor for any person, corporation, retailer, or employee of a retailer selling nitrous oxide to sell, give away, or in any way furnish to another person who is in fact under 18 years of age any canister, tank, or receptacle either exclusively containing nitrous oxide, or exclusively containing a chemical compound mixed with nitrous oxide, without first obtaining proper proof of identity and age of minority, as specified.* By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 381c is added to the Penal Code, to read:  
2 381c. (a) As used in this section, “nitrous oxide” refers to any  
3 of the following substances: ~~N<sub>2</sub>O~~ *N<sub>2</sub>O*, dinitrogen monoxide,  
4 dinitrogen oxide, nitrogen oxide, and laughing gas.  
5 (b) Every person who sells, furnishes, administers, distributes,  
6 gives away, or offers to sell, furnish, administer, distribute, or give  
7 away a device, *canister, tank, or receptacle* either exclusively  
8 containing nitrous oxide or exclusively containing a chemical  
9 compound mixed with nitrous oxide, to a person under 18 years  
10 of age is guilty of a misdemeanor *punishable by a fine not to exceed*  
11 *two thousand five hundred dollars (\$2,500), or by imprisonment*  
12 *in the county jail for a period of not more than one year, or by*  
13 *both that fine and imprisonment.*  
14 (c) ~~Every person who sells, furnishes, administers, distributes,~~  
15 ~~gives away, or offers to sell, furnish, administer, distribute, or give~~  
16 ~~away a device, either exclusively containing nitrous oxide or~~  
17 ~~exclusively containing a chemical compound mixed with nitrous~~  
18 ~~oxide, to a person under 18 years of age, for the purpose of causing~~  
19 ~~a condition of intoxication, euphoria, excitement, exhilaration,~~  
20 ~~stupefaction, or dulling of the senses or nervous system is guilty~~  
21 ~~of a misdemeanor and is punishable by a fine not exceeding two~~

1 ~~thousand five hundred dollars (\$2,500), by imprisonment in the~~  
2 ~~county jail for not more than one year, or by both that fine and~~  
3 ~~imprisonment.~~

4 ~~(d) Every person who possesses a device, either exclusively~~  
5 ~~containing nitrous oxide or exclusively containing a chemical~~  
6 ~~compound mixed with nitrous oxide, with the intent that the nitrous~~  
7 ~~oxide be sold, furnished, administered, distributed, or given away~~  
8 ~~to a person under 18 years of age is guilty of a misdemeanor and~~  
9 ~~is punishable by a fine not exceeding two thousand five hundred~~  
10 ~~dollars (\$2,500), by imprisonment in the county jail for not more~~  
11 ~~than one year, or by both that fine and imprisonment.~~

12 ~~(e) (1) Every retailer, or employee of a retailer, selling devices~~  
13 ~~exclusively containing nitrous oxide shall require a person who is~~  
14 ~~purchasing a device exclusively containing nitrous oxide and whose~~  
15 ~~age is in question to exhibit proper proof of age.~~

16 ~~(2) Any person who violates this subdivision is guilty of a~~  
17 ~~misdemeanor.~~

18 ~~(c) (1) Every person, corporation, retailer, or employee of a~~  
19 ~~retailer selling nitrous oxide who sells, gives away, or in any way~~  
20 ~~furnishes to another person who is in fact under 18 years of age,~~  
21 ~~any canister, tank, or receptacle either exclusively containing~~  
22 ~~nitrous oxide, or exclusively containing a chemical compound~~  
23 ~~mixed with nitrous oxide, without first obtaining proper proof of~~  
24 ~~identity and age of majority is guilty of a misdemeanor.~~

25 ~~(3)~~

26 ~~(2) For the purposes of this subdivision, “proper proof of age~~  
27 ~~identity and age of majority” means a valid passport, Armed Forces~~  
28 ~~identification card, or valid motor vehicle operator’s license or~~  
29 ~~identification card that indicates that the person is 18 years of age~~  
30 ~~or older.~~

31 ~~(f)~~

32 ~~(d) On and after July 1, 2010, the court shall order the~~  
33 ~~suspension of the business license, for a period of one year, of a~~  
34 ~~person who knowingly violates any of the provisions of this section~~  
35 ~~after having been previously convicted of a violation of this section,~~  
36 ~~unless the owner of the business license can demonstrate a good~~  
37 ~~faith attempt to prevent illegal sales or deliveries by the owner’s~~  
38 ~~employees.~~

39 ~~(g)~~

1     (e) This section shall not apply to any person who administers  
2     nitrous oxide for the purpose of providing medical or dental care,  
3     if administered by a medical or dental practitioner licensed by this  
4     state; or at the direction or under the supervision of a practitioner  
5     licensed by this state.

6     SEC. 2. No reimbursement is required by this act pursuant to  
7     Section 6 of Article XIII B of the California Constitution because  
8     the only costs that may be incurred by a local agency or school  
9     district will be incurred because this act creates a new crime or  
10    infraction, eliminates a crime or infraction, or changes the penalty  
11    for a crime or infraction, within the meaning of Section 17556 of  
12    the Government Code, or changes the definition of a crime within  
13    the meaning of Section 6 of Article XIII B of the California  
14    Constitution.